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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 408.

HENRIETTA KREAM,
Petitioner,

v.

PUBLIC SERVICE COORDINATED TRANSPORT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

PETITIONER'S REPLY BRIEF.

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Of Counsel with Petitioner.

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This short reply to respondent's brief in opposition to the petition for writ of certiorari is directed to two matters contained therein.

We have no wish to expand our argument for the writ or to reply to everything that is contained in respondent's brief, which we think would be unduly burdensome and unnecessary, because, we submit, repondent's brief does not meet the true basis for the application nor does it answer petitioner's argument.

However we feel we should not let pass the two matters to which we will direct our reply.

I.

The first of these, is an incomplete quotation from Dr. Lieb's testimony. We desire to supply the complete context of Doctor Lieb's answer to a question on cross examination. The incomplete version set forth in respondent's brief is misleading, and is obviously taken out of context of the answer as given.

II.

The other matter, is a misconception as to petitioner's main contention.

Respondent devotes a large part of its brief in demonstrating the existence of evidence which is not in dispute, and which in nowise refutes petitioner's contention.

As to the first matter, namely Dr. Lieb's testimony, respondent quotes it as follows (see page 5 of respondent's brief in opposition to petition for certiorari):

> "Dr. Saul Lieb, the Petitioner's other doctor, testified (Record 147a-18) that the driving of his own automobile 'sure was' inadvisable."

The record is as follows (R. 147a-20 to 36):

> "*Cross examination by Mr. Sellick:*
>
> . . .
>
> Q. Was the driving of his own car inadvisable? A. It sure was. (Witness nods head affirmatively.)
>
> Q. And that occurred closer to the death than the driving of the bus; isn't that true? A. It occurred

closer to the time of his death than the driving of the bus, but naturally, the driving of the bus was a much more major type of effort than the driving of his own automobile, and by the time he drove his own automobile, of course, his condition was much worse in any case because he had just finished driving the bus through the City Streets.

Q. What streets did he drive it through? A. Well, I know he drove from the downtown area of Military Park up to 14th Avenue and 19th Street. I know, too, that without knowing the exact route of the bus that he had to go through the downtown area.

Q. Do you know the distance between those points? A. I would guess that it's several miles, certainly."

Taken in its entirety, the testimony, thus elicited fully supports Petitioner's contention, and the off-hand and incomplete reference to Dr. Lieb's answer as set forth in respondent's brief simply avoids the issue.

As to the second matter, respondent first quotes from the State Supreme Court's opinion and then says in its brief (page 11):

"'We cannot speculate as to whether any exertion created by getting out of the seat of the bus at the end of the line, or driving the bus or walking from the bus to the parked car and then driving several miles before the fatal spasm in the attack could have been the inducing factor. * * *'

"Upon that comment by the court of the possibilities involved in the case, the Petitioner attempts to raise the violation of a Federal right by charging that there was no evidence in support of the various items contained in the comment and that there was an interjection into the case of a new theory."

Petitioner made and makes no such charge. Petitioner charges that there was *no medical evidence* to support the State Supreme Court's speculation into other possible causes outside of the actual driving of the bus during the midst and throes of decedent's heart attack, and respondent, in its brief, did not and could not point out any such medical evidence because there was none.

Why there should be this misconception by respondent we do not know, because we stated plainly on page 15 of the petition for certiorari, that:

> "There was *no medical proof* offered by the respondent that any other activity of the decedent, referred to by the Supreme Court in its opinion, was in any way connected with his death—no evidence on this score was offered by the respondent and therefore was not in the case."

Respondent does not attempt to refute this contention, and rests content with reference to the record as to the non-medical testimony, (pages 11 and 12 of its brief). This non-medical testimony is not involved in any issue raised by petitioner, and in fact is set forth in detail on pages 6, 7 and 8 of the petition for certiorarj.

Again, respondent on page 13 of its brief, refers to "affirmative proof establishing the other activities." But this obviously relates to the non-medical testimony.

Further discussion would be merely repetitious of what has been said in the petition for certiorari.

It is not our intention to argue the entire case on the merits at this juncture—such an argument would follow the granting of the writ. We do submit, however, that we

have shown a right to our day in court; and in this regard the respondent's failure to meet the real issue presented, and its argument on the existence of *non-medical proofs* as an answer to our contention with respect to the absence of *medical proofs*, only tends to confirm our contention that we should have our day in court on the merits, which only this Court now can grant.

Conclusion.

We respectfully submit that the petition for a writ of certiorari should be granted.

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